

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

05-CR-6099L
06-CV-6373L

v.

JANET FATICONE,

Defendant.

On January 20, 2006, I sentenced the defendant Janet Faticone (“Faticone”) principally to a term of imprisonment of 12 months and 1 day on her guilty plea to one count of mail fraud in violation of 18 U.S.C. § 1341. Judgment was entered January 26, 2006. Faticone did not appeal the judgment.

Faticone filed a petition for a writ of habeas corpus in the District Court for the District of Connecticut, where she is now incarcerated. That court transferred the case here to the Western District of New York and deemed the petition to be one to vacate pursuant to 28 U.S.C. § 2255.

I have reviewed the petition, the original plea agreement, and the Judgment and Commitment and find no basis to grant the relief requested. Faticone’s *pro se* petition contains only one claim: that her sentence was “harsher” than that of her co-defendant.

Faticone fails to set forth any constitutional violation which requires vacating or modifying the Judgment. Faticone was sentenced well below the statutory maximum and more than 2 years lower than the high end of the Guideline range, 30 months. Faticone’s co-defendant did receive a

more favorable sentence, 6 months, but she did cooperate with the Government, and there were other reasons justifying the different sentences.

Simply because a defendant is unhappy with the sentence imposed does not provide any basis for an appeal or a collateral proceeding under § 2255. No constitutional violation is articulated or even suggested. Furthermore, the plea agreement specifically provides that Faticone may not appeal or prosecute a collateral proceeding to challenge the judgment and, for that reason as well, this petition should be dismissed.

CONCLUSION

The petition of Janet Faticone to modify or vacate the Judgment, pursuant to 28 U.S.C. § 2255 is dismissed.

I decline to issue a certificate of appealability because Faticone has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
August 3, 2006.